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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,660	04/02/2004	Brace Beemer Daniel		1033

7590 03/11/2005

Brace Beemer Daniel  
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EXAMINER
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SWIATEK, ROBERT P

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/816,660

Applicant(s)

DANIEL ET AL

Examiner

Robert P. Swiatek

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application:
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Markum (US 4,313,397). The patent to Markum discloses a method of agitating poultry by using a plurality of animal-walking means 16 movably mounted by carriages 10 upon a track 6. For the purposes of this action, the animal-walking means 16—which can be a scarecrow 30, a fringe member 32, and a container 36—are considered to constitute robots. A timer 134 dictates the frequency with which the animal-walking means 16 travel about the track 6—for example, once every four hours. Movement of the animal-walking means induces poultry within an enclosed area 2 “to move so that the animal or animals feed more often” (see column 2, lines 30, 31, of Markum).

Claims 2, 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. In claim 2, line 4, “said robot” lacks a prior antecedent basis while the entire phrase “said robot within said plurality of robots” is unclear, in lines 10, 11, the phrase “interpret said signals as distance” is unclear, in line 16, “said periodic schedule of activation” lacks a prior antecedent basis, in lines 20, 21, the expression “internally mounting components” is unclear.

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Claim 1 is objected to because of the following informalities: in line 8, "Whereby" should be changed to -whereby-. Appropriate correction is required.

The disclosure is objected to because of the following informalities: The brief description of each figure of the drawings should not include a recitation of reference numerals; for example, on page 7, lines 6-9 should be deleted and in line 5, "Fig. 1" should be deleted. The description of each of Figures 2-9 should be amended in like manner. The detailed description of the invention should be rewritten accordingly to encompass the reference numerals deleted from the brief descriptions of the drawing figures (note the format of the cited patents for examples of proper brief drawing descriptions and detailed descriptions). On page 1 of the specification, it is unclear what type of application is being relied upon for an earlier filing date. A provisional application, for example, is usually set forth as -60/xxx,xxx-, where each x represents a numeral; however, there does not appear to be a provisional application associated with the instant application.

Appropriate correction is required.

The abstract of the disclosure is objected to because in line 1, "We have invented an" should be changed to -An-. Correction is required. See MPEP § 608.01(b).

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: Inventor Salazar's signature has not been dated.

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Claims 2, 3 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The patents to Markum (US 4,167,153), Thompson et al. (US 5,076,212), and Good et al. (US 6,487,988 B1) have been cited to provide additional examples of poultry agitation systems.

RPS: ©703/308-2700 (current); 571/272-6894 (future)  
7 March 2005—35th

*Robert P. Swiatek*

ROBERT P. SWIATEK  
PRIMARY EXAMINER  
ART UNIT ~~333~~ 3643